

DENNIS J. HERRERA, State Bar #139669
City Attorney
KATHARINE HOBIN PORTER, State Bar #173180
Chief Labor Attorney
JONATHAN ROLNICK, State Bar #151814
Deputy City Attorney
Fox Plaza
1390 Market Street, 5th Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3815
Facsimile: (415) 554-4248
E-Mail: jonathan.rolnick@sfcityatty.org

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY TAYLOR,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; KEVIN SPORE; and DOES 1
through 20, inclusive,

Defendants.

Case No. 3:20-cv-07692

Removed from the Superior Court of California for
the County of San Francisco, Case No. CGC-20-
585156

**NOTICE OF REMOVAL OF ACTION UNDER
28 U.S.C. SECTIONS 1441 and 1446**

Date Action Filed: July 1, 2020
Trial Date: None Set

**TO THE CLERK OF THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA AND TO PLAINTIFF TIMOTHY TAYLOR AND THE ATTORNEYS OF
RECORD:**

NOTICE IS HEREBY GIVEN that the City and County of San Francisco, Defendant in the captioned action, No. CGC-20-585156 in the files and records of the Superior Court in and for the City and County of San Francisco, hereby files in the United States District Court for the Northern District of California, a Notice of Removal of said action to said United States District Court, pursuant to 28 U.S. C. §§ 1441 and 1446, and is filing in the Superior Court a Notice of Removal.

Defendant City and County of San Francisco, pursuant to 28 U.S.C. § 1441, presents the following facts to the Judges of the United States Court for the Northern District of California:

A civil action bearing the above-caption was commenced in the Superior Court of California, in and for the City and County of San Francisco, Action No. CGC-20-585156, on July 1, 2020, and is pending therein.

The Complaint in said pending action alleges three claims for relief. Plaintiff's second claim seeks relief under 42 U.S.C. §1983, *et seq.* for alleged violation of employee's Federal Civil Rights. *See*, 42 U.S.C. §1983.

This action is one which may properly be removed to this Court pursuant to 28 U.S.C. §1441(b), for the reason that Plaintiff has alleged violations of laws of the United States, over which this Court has original jurisdiction. To the extent Plaintiff's Complaint alleges claims other than violations of rights under the laws of the United States, said claims may be removed and adjudicated by this Court pursuant to 28 U.S.C. §1441(c).

Defendant received copies of the summons and complaint when it was served on October 2, 2020. Pursuant to 28 U.S.C. §1446(b), a copy of the summons is attached as Exhibit A; a copy of the Complaint is attached as Exhibit B; and a copy of Defendants' Answer filed in the Superior Court on November 2, 2020, is attached as Exhibit C. To the knowledge of the undersigned, the City is the only defendant served to date and that the above are the only pleadings on file.

1 Dated: November 2, 2020

DENNIS J. HERRERA

City Attorney

KATHARINE HOBIN PORTER

Chief Labor Attorney

JONATHAN ROLNICK

Deputy City Attorney

5 By: /s/ Jonathan Rolnick

JONATHAN ROLNICK

Attorneys for Defendant(s)

CITY AND COUNTY OF SAN FRANCISCO

PROOF OF SERVICE

I, DAVID BLUM, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On November 2, 2020, I served the following document(s):

• **NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTIONS 1441 and 1446**

on the following persons at the locations specified:

Michael E. Adams *Counsel for Plaintiff*
LAW OFFICES OF MICHAEL E. ADAMS
702 Marshall Street, Suite 300
Redwood City, CA.94063
Telephone: (650) 599-9463
Fax: (650) 599-9785

Email: michael@michaeadamslaw.com

in the manner indicated below:



BY UNITED STATES MAIL: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed November 2, 2020, at San Francisco, California.



DAVID BLUM

EXHIBIT A

SUM-100

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

CITY AND COUNTY OF SAN FRANCISCO,
KEVIN SPORE, and DOES 1 to 20

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):
TIMOTHY TAYLOR

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court, County of San Francisco
400 McAllister Street
San Francisco, CA 94102

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
MICHAEL E. ADAMS 47278 LAW OFFICES OF MICHAEL E. ADAMS
702 Marshall Street, Suite 300 (650) 599-9463
Redwood City, CA 94063

DATE: JUL 01 2020
(Fecha)

Clerk of the Court

Clerk, by
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

ANGELICA SUNGA



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☒ on behalf of (specify): SF City & County
under: ☐ CCP 416.10 (corporation)
☐ CCP 416.20 (defunct corporation)
☐ CCP 416.40 (association or partnership)
☐ other (specify):

- ☐ CCP 416.60 (minor)
☐ CCP 416.70 (conservatee)
☐ CCP 416.90 (authorized person)

- ☒ by personal delivery on (date): 10/2/20

Page 1 of 1

EXHIBIT B

1 MICHAEL E. ADAMS (SBN: 47278)
2 LAW OFFICES OF MICHAEL E. ADAMS
3 702 Marshall Street, Suite 300
4 Redwood City, CA 94063
5 Telephone: (650) 599-9463
6 Fax: (650) 599-9785

7 Attorney for Plaintiff
8 TIMOTHY TAYLOR

FILED
SUPERIOR COURT
COUNTY OF SAN FRANCISCO

JUL 01 2020

CLERK OF THE COURT

BY:  Deputy Clerk

ANGELICA SUNGA

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Case No. CGC - 20 - 585156

TIMOTHY TAYLOR,
Plaintiff,

v.

CITY AND COUNTY OF SAN
FRANCISCO, KEVIN SPORE, and DOES
1 to 20,
Defendants.

**COMPLAINT FOR RACIAL
HARASSMENT AND,
DISCRIMINATORY
DISCHARGE IN VIOLATION
OF FEHA AND FEDERAL CIVIL
RIGHTS, AND FOR
WRONGFUL DISCHARGE IN
VIOLATION OF PUBLIC
POLICY,**

Plaintiff alleges:

GENERAL FACT ALLEGATIONS

1. Plaintiff is an African-American adult male, and is 61 years of age.
2. Defendant City and County of San Francisco ("CCSF") is a city and county duly organized under the laws of the State of California, and, at all times herein involved, Defendant Kevin Spore ("Spore") was employed by CCSF in a supervisory position in its Department of Public Works ("DPW").
3. The true names, capacities, and/or facts showing the liability of Defendants Does 1 to 20 are presently unknown, and said Defendants are therefore fictitiously named.

BY FAX

LAW OFFICES OF
MICHAEL E. ADAMS
702 MARSHALL ST., #300
REDWOOD CITY CA 94063
(650) 599-9463

1 At such time as said names, capacities, and/or facts are ascertained, this Complaint will
2 be amended to so show.

3 4. Each Defendant was the agent and employee of every other Defendant, and, in
4 acting as herein alleged, acted within the course and scope of said agency and
5 employment.

6 5. Plaintiff was employed by CCSF as a carpenter in the DPW from 2014 to
7 August 14, 2018.

8 6. While working in the course of his said employment, Plaintiff suffered
9 disabling hand injuries in 2016 and 2017, and remained so disabled during 2018.

10 7. From at least mid-2017 until the end of Plaintiff's said employment, Defendant
11 Spore was his second level supervisor. During said time period, Defendant Spore
12 frequently harassed Plaintiff, including by unreasonably and excessively surveilling and
13 micro-managing Plaintiff during his working hours.

14 8. On or about July 3, 2018, Defendants, including Defendant Spore, further
15 harassed Plaintiff by preparing, issuing, circulating, and posting a false and malicious
16 bulletin within the DPW that named Plaintiff, depicted his photograph, and portrayed him
17 as a potential threat who for that reason was not allowed on the DPW premises.

18 9. Extremely fearful that said bulletin put him in danger of hostile or violent
19 action if he worked any further at the DPW, Plaintiff did not thereafter come to work
20 there, and resigned from his employment on August 14, 2018.

21 22 **FIRST CAUSE OF ACTION**

23 **(FEHA: Racial harassment and discriminatory constructive discharge)**

24 10. Plaintiff herein realleges Paragraphs 1 through 9, hereinabove, and each and
25 every allegation thereof, as though fully set forth herein.

26 10. By acting as hereinabove alleged, Defendants, both individually and by
27 conspiring together, violated the Fair Employment and Housing Act (FEHA) by
28

1 subjecting Plaintiff to racial harassment and, by discriminating against Plaintiff on the
2 basis of his race through his constructive discharge by pressuring him to resign from his
3 employment on or about August 14, 2018.

4 11. As a proximate result thereof, Plaintiff suffered general and special damages,
5 including but not limited to emotional distress and loss of earnings.

6 12. Said conduct by the Defendants other than Defendant CCSF was malicious
7 and oppressive, thereby entitling Plaintiff to awards of punitive damages against said
8 Defendants and each of them.

9 13. Plaintiff timely filed a complaint with the Department of Fair Employment and
10 Housing concerning said discrimination and harassment, and received a right to sue letter
11 therefrom.

12 14. Upon prevailing herein, Plaintiff is entitled under FEHA to an award of his
13 reasonable attorney's fees.

15 SECOND CAUSE OF ACTION

16 (Federal civil rights)

17 15. Plaintiff herein realleges Paragraphs 1 through 14 of this Complaint, and each
18 and every allegation thereof, as though fully set forth herein.

19 15. By harassing Plaintiff as herein above alleged, including by preparing, issuing,
20 circulating, and posting said false and malicious bulletin concerning him, Defendants
21 discriminated against Plaintiff on the basis of his race, disability, and/or age, and thereby
22 infringed his rights to Equal Protection as protected by the Forteenth Amendment of the
23 United States Constitution.

24 16 By acting as hereinabove alleged, Defendants violated Plaintiff's federal civil
25 rights as protected by 42 United States Code §1983.

26 16. As the proximate result thereof, Plaintiff suffered general and special
27 damages, including but not limited to emotional distress and loss of earnings..
28

1 17 The Defendants other than Defendant CCSF acted in reckless disregard of
2 Plaintiff's constitutional rights, thereby further entitling Plaintiff to awards of punitive
3 damages against each of them.

4 18. Upon prevailing herein, Plaintiff will be entitled to an award of his reasonable
5 attorney's fees pursuant to 42 United States Code §1988.

6
7 **THIRD CAUSE OF ACTION**

8 **(Wrongful constructive discharge in violation of public policy)**

9 19. Plaintiff herein realleges Paragraphs 1 through 18 of this Complaint, and each
10 and every allegation thereof, as though fully set forth herein.

11 20. By acting as hereinabove alleged, Defendants discriminated against Plaintiff
12 on the basis of his race, age, and/or disability, and thereby violated fundamental public
13 policies, including the policies set forth in FEHA, the California Constitution, and the
14 Equal Protection Clause of the Fourteenth Amendment Clause of the United States
15 Constitution.

16 21. As a proximate result thereof, Plaintiff suffered general and special damages,
17 including but not limited to emotional distress and loss of earnings.

18 22. Said conduct by the Defendants other than Defendant CCSF was malicious
19 and oppressive, thereby entitling Plaintiff to awards of punitive damages against said
20 Defendants and each of them.

21 WHEREFORE, Plaintiff prays for relief as follows:

22 1. Pursuant to the First and Second Causes of Action, for general and special
23 damages according to proof, for punitive damages against Defendants other than CCSF,
24 and for reasonable attorney's fees.

25 2. Pursuant to the Third Cause of Action, for general and special damages
26 according to proof, and for punitive damages against Defendants other than CCSF.

27 3. For costs of suit.
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1 4. For such other and further relief as the court deems just and proper.

2 DATED: June 30, 2020

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MICHAEL E. ADAMS
Attorney for Plaintiff
TIMOTHY TAYLOR

EXHIBIT C

DENNIS J. HERRERA, State Bar #139669
City Attorney
KATHARINE HOBIN PORTER, State Bar #173180
Chief Labor Attorney
JONATHAN ROLNICK, State Bar #151814
Deputy City Attorney
Fox Plaza
1390 Market Street, 5th Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3815
Facsimile: (415) 554-4248
E-Mail: jonathan.rolnick@sfcityatty.org

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

TIMOTHY TAYLOR,

Plaintiff,

vs.

CITY AND COUNTY OF SAN
FRANCISCO; KEVIN SPORE; and DOES 1
through 20, inclusive,

Defendants.

Case No. CGC-20-585156

**DEFENDANT CITY AND COUNTY OF SAN
FRANCISCO'S ANSWER TO COMPLAINT
FOR DAMAGES**

Date Action Filed: July 1, 2020

Trial Date: None Set

GENERAL DENIAL

Defendant City and County of San Francisco (the “City”), in answer to Plaintiff’s Complaint for Damages (“Complaint”), generally denies each and every allegation in the Complaint pursuant to California Code of Civil Procedure § 431.30. Without limiting the foregoing general denial, the City denies that Plaintiff has been injured or has suffered any damages, and that Plaintiff is entitled to any relief requested in the Complaint, or to any relief in any amount or of any kind whatsoever.

AFFIRMATIVE DEFENSES

In addition, the City asserts the following separate and affirmative defenses, without conceding that it has the burden of persuasion or the burden of proof as to any affirmative defense set forth herein:

FIRST AFFIRMATIVE DEFENSE

(Failure to State Claim)

As a separate and affirmative defense to each and every allegation, claim and request for relief, Plaintiff’s Complaint and each claim therein fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Equitable Defenses)

As a separate and affirmative defense to each and every allegation, claim and request for relief, Plaintiff’s claims are barred, in whole or in part, by the equitable doctrines of waiver, unclean hands, laches and estoppel.

THIRD AFFIRMATIVE DEFENSE

(Statute of Limitations)

As a separate and affirmative defense to each and every allegation, claim and request for relief, Plaintiff’s claims are barred, in whole or in part, by the applicable statute of limitations, including but not limited to the provisions of the California Government Code §§ 12960 and 12965, California Code of Civil Procedure §§ 338, 340, 342, and 343, 42 U.S.C §2000e, *et seq.*, and 42 U.S.C. §§ 1983, 1988.

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FOURTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative and Contractual Remedies)

As a separate and affirmative defense to each and every allegation, claim and request for relief, Plaintiff failed to exhaust her contractual and administrative remedies, including failing to comply with the jurisdictional prerequisites to maintaining lawsuits under the California Fair Employment and Housing Act and/or Title VII of the Civil Rights Act of 1964.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

As a separate and affirmative defense to each and every allegation, claim and request for relief, Plaintiff has had and continues to have the ability and opportunity to mitigate her alleged damages and has failed to act reasonably to mitigate any such damages.

SIXTH AFFIRMATIVE DEFENSE

(Claim Presentation)

As a separate and affirmative defense to each and every allegation, claim and request for relief, Plaintiff has failed to comply with the requirements of the California Government Claims Act as contained in the California Government Code Sections 801 *et seq.*

SEVENTH AFFIRMATIVE DEFENSE

(Legitimate Non-Discriminatory Reasons for Employment Decision)

As a separate and affirmative defense to each and every allegation, claim and request for relief, the City asserts that any and all employment actions taken with respect to Plaintiff were not based on any illegal consideration, but rather were based on one or more legitimate, sufficient, non-discriminatory or non-retaliatory reasons.

EIGHTH AFFIRMATIVE DEFENSE

(Reasonable Steps)

As a separate and affirmative defense to each and every allegation, claim and request for relief, the City asserts that it exercised reasonable care to prevent and promptly correct any discrimination or harassment and Plaintiff unreasonably failed to take advantage of any preventative or corrective procedures provided by the City or take other steps to avoid harm.

1 **NINTH AFFIRMATIVE DEFENSE**

2 **(Workers' Compensation)**

3 As a separate and affirmative defense to each and every allegation, claim and request for relief,
4 Plaintiff's claims are barred, in whole or in part, by the exclusive remedy provisions of the Workers'
5 Compensation Act.

6 **TENTH AFFIRMATIVE DEFENSE**

7 **(Immunity, Qualified Immunity and Privilege)**

8 As a separate and affirmative defense to each and every allegation, claim and request for relief,
9 the City asserts that as a public entity it enjoys absolute and qualified immunity pursuant to
10 Government Code § 820.2 and § 821.6, and agency immunity pursuant to Government Code §§ 815,
11 815.2, 818, 818.2, 818.8, and other immunities pursuant to Government Code §§ 820.4, 820.8, and
12 821.6, the United States Constitution, and the common and statutory law of the United States and the
13 State of California.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 **(Other's Conduct)**

16 As a separate and affirmative defense to each and every allegation, claim and request for relief,
17 Plaintiff's damages, if any, were caused by the intentional, reckless or negligent acts, omissions and/or
18 misconduct of Plaintiff or a third party.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 **(Setoff)**

21 As a separate and affirmative defense to each and every allegation, claim and request for relief,
22 the City is entitled to a setoff of Plaintiff's damages, if any.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 **(After-Acquired Evidence)**

25 As a separate and affirmative defense to each and every allegation, claim and request for relief,
26 Plaintiff's claimed are barred, in whole or in part, by after-acquired evidence.

27 WHEREFORE, the City prays for judgment as follows:

- 28 1. That Plaintiff takes nothing from the City;

2. That the Complaint be dismissed with prejudice;
3. That the City recovers costs of suit herein, including attorneys' fees; and
4. For such other relief as is just and proper.

Dated: November 2, 2020

DENNIS J. HERRERA
City Attorney
KATHARINE HOBIN PORTER
Chief Labor Attorney
JONATHAN ROLNICK
Deputy City Attorney

By: /s/ Jonathan Rolnick
JONATHAN ROLNICK

Attorneys for Defendant(s)
CITY AND COUNTY OF SAN FRANCISCO

PROOF OF SERVICE

I, DAVID BLUM, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On November 2, 2020, I served the following document(s):

- **DEFENDANT CITY AND COUNTY OF SAN FRANCISCO'S ANSWER TO COMPLAINT FOR DAMAGES**

on the following persons at the locations specified:

Michael E. Adams *Counsel for Plaintiff*
LAW OFFICES OF MICHAEL E. ADAMS
702 Marshall Street, Suite 300
Redwood City, CA.94063
Telephone: (650) 599-9463
Fax: (650) 599-9785

Email: michael@michaeleadamslaw.com

in the manner indicated below:

☒ **BY ELECTRONIC MAIL:** Based on a court order or an agreement of the parties to accept electronic service, I caused the documents to be sent to the person(s) at the electronic service address(es) listed above. Such document(s) were transmitted *via* electronic mail from the electronic address: david.blum@sfcityatty.org ☒ in portable document format ("PDF") Adobe Acrobat or ☐ in Word document format.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed November 2, 2020, at San Francisco, California.



DAVID BLUM